

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

IN THE MATTER OF:

DENNIS B. TOMES, JR.
JESSICA D. TOMES, Debtors
32574 BONDIE DRIVE
BROWNSTOWN TOWNSHIP, MI 48173
SSN: XXX-XX-5004, SSN: XXX-XX-4761

CHAPTER 13
CASE NO: 09-63397
JUDGE THOMAS J. TUCKER

**TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO REMIT
TAX REFUNDS TO THE CHAPTER 13 TRUSTEE AND
DUE TO PLAN EXPIRATION**

The Chapter 13 Standing Trustee files this Motion under E.D. Mich. L.B.R. 9014-1 and states:

1. That this motion is brought pursuant to 11 U.S.C §1307 (c).
2. That under the terms of the debtor's confirmed Chapter 13 Plan, as last amended, if any, the debtor was obligated to remit 100 % of tax refunds to which the debtor becomes entitled during the pendency of the Chapter 13 Plan.
3. That based upon information and belief, the debtor has not remitted refunds for the year(s): 2011, 2013 to the Trustee as ordered by this Honorable Court.
4. That the debtor's failure to remit the tax refund is a material default in the terms of the confirmed Chapter 13 Plan for which dismissal or conversion of the case is appropriate.
5. That the Trustee also brings this motion based upon the expiration of the Chapter 13 Plan pursuant to the Order Confirming Plan previously entered by the Court and the failure to complete the Plan, resulting in a material default thereon.

WHEREFORE, your Trustee requests this Honorable Court dismiss the above captioned matter due to a material default in the terms of the confirmed Plan and enter its Order dismissing this case and granting such other relief as it is just.

April 14, 2015

OFFICE OF THE CHAPTER 13 TRUSTEE - DETROIT

/S/ TAMMY L. TERRY (P46254)

TAMMY L. TERRY, Chapter 13 Trustee

/S/ KIMBERLY SHORTER-SIEBERT (P49608)

/S/ MARILYN R. SOMERS-KANTZER (P52488)

535 Griswold, Suite 2100

Detroit, MI 48226

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CHAPTER 13
CASE NO: 09-63397
JUDGE THOMAS J. TUCKER

**ORDER DISMISSING CHAPTER 13 PROCEEDINGS FOR FAILURE OF
THE DEBTOR(S) TO REMIT TAX REFUNDS TO THE CHAPTER 13
TRUSTEE AND DUE TO PLAN EXPIRATION**

This matter having come to be heard upon the Trustee's Motion to Dismiss for failure of the Debtors to remit tax refunds to the Chapter 13 Trustee and due to Plan Expiration filed pursuant to E.D. Mich. L.B.R. 9014-1, notice having been duly given and an opportunity for hearing having been provided, and based upon the records of the Court herein, the dismissal of the case is warranted for the reason that the debtors' Chapter 13 Plan has expired by its terms and the Debtors has failed to complete all requirements for a discharge under the Plan, and the Court finds that the relief requested is warranted, and the Court being otherwise sufficiently advised in the premises;

IT IS HEREBY ORDERED that the Chapter 13 case of the Debtors herein be and the same hereby is dismissed for the failure of the Debtors to remit tax refunds as required by the confirmed Chapter 13 Plan, which constitutes a material default in the Plan;

IT IS HEREBY ORDERED that the Chapter 13 Plan has expired without successful completion of all requirements for a discharge and the case is dismissed.

IT IS FURTHER ORDERED that the clerk's of the Court shall immediately provide notice of the entry of this Order to all creditors listed in this case, the Debtors, debtors' attorney, if any, and the Trustee;

IT IS FURTHER ORDERED that TAMMY L. TERRY, Trustee, is discharged as Trustee and the Trustee and her surety is released from any and all liability on account of the within proceedings.

EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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IN THE MATTER OF:

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CHAPTER 13
CASE NO: 09-63397
JUDGE THOMAS J. TUCKER

**NOTICE OF TRUSTEE'S MOTION TO DISMISS FOR FAILURE
TO REMIT TAX REFUNDS TO THE CHAPTER 13 TRUSTEE
AND DUE TO PLAN EXPIRATION**

The Chapter 13 Trustee has filed papers with the court to dismiss the above captioned case for failure to refunds to the Chapter 13 Trustee and due to plan expiration.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to dismiss this case, or if you want the court to consider your views on the Trustee's motion, within 21 days, you or your attorney must

1. File with the court a written response or an answer, explaining your position at *
**United States Bankruptcy Court
211 W. Fort Street, Detroit, Michigan 48226**

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

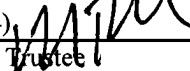
**OFFICE OF THE CHAPTER 13 STANDING TRUSTEE - DETROIT
ATTN: MOTION DEPARTMENT
535 Griswold, Suite 2100 Detroit, MI 48226**

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

OFFICE OF THE CHAPTER 13 TRUSTEE - DETROIT

April 14, 2015

/S/ TAMMY L. TERRY (P46254) 
TAMMY L. TERRY, Chapter 13 Trustee
/S/ KIMBERLY SHORTER-SIEBERT (P49608)
/S/ MARILYN R. SOMERS-KANTZER (P52488)
535 Griswold, Suite 2100
Detroit, MI 48226
(313) 967-9857
mieb_ecfadmin@det13.net

* Response or answer must comply with F.R.Civ.P. 8(b), (c) and (e)

EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT**

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CHAPTER 13
CASE NO: 09-63397
JUDGE THOMAS J. TUCKER

**CERTIFICATE OF MAILING OF TRUSTEE'S MOTION TO DISMISS
FOR FAILURE TO REMIT TAX REFUNDS TO THE CHAPTER 13
TRUSTEE AND DUE TO PLAN EXPIRATION**

I certify that on the date indicated below, copies of the Trustee's Motion to Dismiss for Failure to Remit Tax Refunds to the Chapter 13 Trustee and Due to Plan Expiration, Notice and Opportunity for Hearing and proposed Order were electronically filed with the Clerk of the Court, served via Electronic Court Filing and/or a copy of same was deposited in the U.S. Mail to the debtors' attorney (if any) or the Debtors, if unrepresented, at the address as it appears below.

4/15/15

OFFICE OF THE CHAPTER 13 TRUSTEE - DETROIT

WILLIAM C BABUT PC
700 TOWNER STREET STE 1
YPSILANTI, MI 48198

DENNIS B. TOMES, JR.
JESSICA D. TOMES
32574 BONDIE DRIVE
BROWNSTOWN TOWNSHIP, MI
48173

/S/ JUATANE MILLER
Chapter 13 Standing Trustee Clerk
535 Griswold, Suite 2100
Detroit, MI 48226
(313) 967-9857
mieb_ecfadmin@det13.net

EXHIBIT 4